

1 completely superfluous. Plaintiff has sued the Church for one reason: to defeat diversity
 2 jurisdiction. If the Church were deemed an “unincorporated association” with capacity to be
 3 sued, the traditional rule is that such an association is a resident of any state in which it has
 4 members, thus making diversity jurisdiction impossible. COP’s motion, if granted, merely
 5 prevents plaintiff’s counsel from forum shopping between federal and state court—adding or
 6 omitting the Church as a defendant at times of plaintiff’s counsel’s whim. Plaintiff’s counsel has
 7 represented several other plaintiffs in sexual abuse cases against COP, and in most of them the
 8 Church is not a named defendant.¹

17 Second, the Church should be dismissed because plaintiff has failed to serve the Church
 18 and, indeed, cannot practically do so under any circumstances. Plaintiff attempted service on the
 19 Church by serving a former clergy member, Gordon Conger, presumably on the belief that Mr.
 20 Conger is the Church’s agent. However, service upon the Church (even if it were a proper party)
 21 cannot be accomplished by serving an “agent” of the Church. Washington law provides an agent
 22 of an unincorporated association can be served when that association is “doing business” in
 23 Washington. Given that the Church has no employees and conducts no business in the State of
 24 Washington, the Church is not “doing business” and thus cannot be served through an agent.
 25 Thus, even if the Church were a proper party, which COP disputes, the Church could be served
 26 only by serving each of its members in the State. COP readily concedes that this is nearly
 27 impossible as a practical matter and such impossibility serves only to highlight the impropriety
 28 of joining the Church in this action.

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 45 ¹ For example, and as discussed in more detail below, plaintiff’s counsel did not name the Church as a defendant in
 the case recently tried against COP in the Western District of Washington. Plaintiffs’ counsel also represent a
 plaintiff in a federal action that does not name the Church as a defendant, *Ames v. Corporation of the President of
 the Church of Jesus Christ of Latter-day Saints*.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF
 JESUS CHRIST OF LATTER-DAY SAINTS’ MOTION TO
 DISMISS - 3

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II. FACTS

A. Procedural History.

Plaintiff initially named a single defendant, COP.² COP removed the action to federal court. Plaintiff then filed a motion to join the Church as a defendant and also a motion to remand. Judge Zilly permitted Plaintiff to amend the Complaint to add the Church as a defendant. Having permitted the amendment, and viewing the Church as an unincorporated association that is a citizen of every state in which a member resides, the court found diversity jurisdiction did not exist and therefore remanded the case to this Court.

Judge Zilly permitted plaintiff to amend the Complaint and add the Church based on the plaintiff's misrepresentation that COP might assert "that it is not the entity responsible for the acts of the Bishops, Stake Presidents and other officials involved in this case." Declaration of Michael Rosenberger, Ex. 2 at 3.³ Plaintiff thus suggested he "could be left with an 'empty chair' defendant." *Id.* COP could not rebut these misrepresentations because they came in plaintiff's reply brief and the court did not hear oral argument. The court relied on these statements and thus allowed Mr. Rinde to add the Church as a defendant, stating that "the absence of the Mormon church as a named defendant could preclude Mr. Rinde from recovering damages for any fault attributable to the Mormon church." Ex. 1 at 2. The court then remanded the case to this Court.

Plaintiff's representation was blatantly false because COP does not distance itself from the acts of Church clergy—to the extent clergy were negligent while acting within the scope of

² The federal court to which the case was removed noted that Plaintiff "failed to plead the existence of two defendants in his Complaint." Declaration of Michael Rosenberger Ex. 1 at 1.

³ Hereafter, subsequent citations to exhibits refer to exhibits to the Rosenberger declaration.

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1 their authority as clergy, COP concedes it is the entity that is responsible. As stated above,
 2 counsel for the parties recently tried *R.K. v. The Corporation of the President of the Church of*
 3 *Jesus Christ of Latter Day Saints*, a sexual abuse case against COP (but not the Church) in the
 4 Western District of Washington. COP itself proposed a jury instruction —which the Court
 5 gave—that succinctly stated the relationship between COP and the Church:
 6

7 Defendant in this case is the corporation established by the Church
 8 of Jesus Christ of Latter-Day Saints to carry out the secular affairs
 9 of the Church. Legally, it stands in the shoes of the Church.

10 Exs. 3-4 (emphasis added).

11 Because plaintiff's misrepresentation concerning the "empty chair" risk occurred in
 12 plaintiff's reply brief on its motion to remand, COP had no ability to "set the record straight."
 13 However, it can do so here: the Church cannot be an "empty chair" to whom fault could be
 14 attributed under R.C.W. 4.22.070, and COP would be willing to so stipulate.

15 B. Similar Cases Show The Church is Not an Appropriate or Necessary Party.

16 Plaintiff's counsel, Mssrs. Pfau and Kosnoff, represent current and former litigants in sex
 17 abuse cases against COP. Some of these cases are being litigated in federal court against only
 18 COP. Given that the Church is not needed to litigate these cases or to collect on any judgment,
 19 one must conclude the Church's presence as a party derives solely from plaintiff's counsel's
 20 opinion as to the forum most favorable for a given case.

21 The cases filed by plaintiff's counsel against COP include:

- 22 1. *R.K. v. The Corporation of the President of The Church of Jesus Christ of Latter-day*
Saints (W.D. Wash. C04-2338 RSM): That case, discussed above, does not name the
 23 Church as a defendant. Four plaintiffs commenced the action, three of whom settled with

1 COP, and R.K.'s claim went to trial. Plaintiff R.K. has appealed the judgment to the
 2 Ninth Circuit.
 3

- 4
- 5 2. *David V. Ames v. The Corporation of the President of the Church of Jesus Christ of*
Latter-day Saints (D.N.J., 2:06-cv-03441 –WJM-RJH). That sexual abuse case does not
 6 name the Church and was recently commenced in federal court in New Jersey.⁴
 7
- 8 3. *Doe v. The Corporation of the President of The Church of Jesus Christ of Latter-day*
Saints (King Co. Sup. Ct. 02-2-04105-1 KNT): That case, also on appeal, does not name
 9 the Church as a defendant. Ex. 7. COP did not remove the case to federal court because
 10 complete diversity was lacking; the plaintiffs and COP's co-defendant were Washington
 11 residents.
 12

13 Hence, plaintiff's counsel are litigating three other cases in which COP is a named
 14 defendant—but not the Church. Surely, plaintiff's counsel cannot contend that plaintiff would
 15 be prejudiced if the Church were dismissed.

16 Plaintiff's counsel have filed one other case in this Court that names both COP and the
 17 Church. It is pending before Judge Inveen and is captioned *D.F. v. The Corporation of the*
President of the Church of Jesus Christ of Latter-day Saints, et. al., (No. 06-2-18131-0 KNT).
 18 In that case, COP has filed a nearly identical motion to dismiss the Church, and that motion will
 19 be argued on the same day as the present motion, February 9, 2007. If it would be of
 20 convenience to the Court, COP would be willing to argue the two motions simultaneously before
 21 both Judge Inveen and Judge Downing.

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⁴ Plaintiff's counsel do not appear on the Complaint in that action, Ex. 5, but the preceding demand letter identifies them as counsel for plaintiff Mr. Ames. Ex. 6.

1 C. **Most Religious Organizations, Including the LDS and Catholic Churches, Operate**
 2 **Through a Form of Corporate Organization.**

3
 4 Before addressing the specifics of the corporate existence of the LDS Church, it is
 5 appropriate to describe why religious organizations adopt a corporate form and the unique
 6 corporate form that is often used. Most religious organizations do not carry out church business
 7 through unincorporated associations. This is not surprising, given the disadvantages of this form
 8 of organization: “lack of limits on personal liability for the members and directors; difficulties in
 9 the ownership, receipt and succession of property, particularly real property; [and] complications
 10 in entering into legal transactions such as contracts and the initiation of lawsuits. . . .”

11
 12 *Gerstenblith, Associational Structures of Religious Organizations*, 1995 B.Y.U. L. Rev. 439, 444
 13
 14 (1995).

15
 16 For these reasons, most organizations which are of any size or
 17 complexity, which own property, or which desire to gain other
 18 advantages from a more formal corporate status choose to
 19 incorporate under one of the applicable state incorporation statutes.

20
 21 *Id.*

22
 23 Utah permits a religious organization to incorporate as a “corporation sole,” thus
 24 permitting the incorporation of one or more high offices within the particular church. Utah Code
 25 Ann. § 16-7-1 et seq. Washington also permits this form of organization and, for example, the
 26 Catholic Bishop of Spokane and the Corporation of the Catholic Archbishop of Seattle are
 27 organized as corporations sole.⁵

28
 29 [A] corporation sole is the incorporation of the bishop or other
 30 presiding officer of the church for the purposes of administering
 31 and managing the affairs, property and temporalities of the church.

32
 33 ⁵ According to the web site of the Washington Secretary of State, <http://www.secstate.wa.gov/corps/>, the Catholic
 34 Bishop of Spokane is an active corporation sole organized in 1915 and The Corporation of the Catholic Archbishop
 35 of Seattle is an active corporation sole organized in 1861.

1 The principal purpose of a corporation sole is to insure the
 2 continuation of ownership of a religious organization's property. At
 3 the death of the individual holding the office, church property
 4 passes to the successor to the office for the benefit of the religious
 5 group, rather than passing to the officeholder's heirs.
 6

7 Gerstenblith, *supra*, at 455. Utah's corporation sole statute grants corporate status and
 8 protection to the incorporating religious organization, and provides that the entity shall have
 9 power: (1) to "acquire," "possess" and "dispose" of real property; (2) "to borrow money"; (3)
 10 "to contract and be contracted with"; (4) "to sue and be sued"; (5) "to plead and be impleaded in
 11 all courts of justice"; and (6) to have a common seal. Utah Code Ann. § 16-7-6.
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14 **D. Defendant COP Exists to Conduct Temporal Affairs on Behalf of the Church.**

15 For nearly 75 years, COP has been incorporated as a corporation sole under Utah law.
 16
 17 Affidavit of Paul D. Rytting, ¶ 3. It has its headquarters in Salt Lake City, Utah. *Id.* It has
 18 employees, owns significant assets and carries out church business. *Id.* COP, for example,
 19 funds all Church-sponsored activities and outings.
 20
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22 **E. The Church Is Concerned Solely with Spiritual Matters, Holds No Property, and**
 23 **Conducts No Business.**

24 As distinguished from COP, the Church exists solely as an ecclesiastical/spiritual
 25 organization, with more than 27,000 congregations and more than 12.6 million members
 26 worldwide. Rytting Affidavit ¶ 5. Under Church doctrine, the Church functions as the Kingdom
 27 of God on earth. From time to time, the president or other "general authorities" of the Church
 28 provide spiritual and doctrinal guidance to local Church leaders and the general membership. *Id.*
 29
 30 ¶ 7. Local leaders of the Church also perform religious functions similar to those performed in
 31 other religious organizations, including blessings, baptisms, confirmation, ordinations, and
 32 the calling of members to serve in volunteer ecclesiastical positions. *Id.* The Church itself
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1 has no corporate identity and no articles of association, bylaws, or rules governing legal
 2 existence. Instead, the Church is organized and governed by scripture, by modern revelation
 3 from God, and by the ecclesiastical doctrines and beliefs of the Church. *Id.* ¶ 6.
 4

5 As a purely ecclesiastical and spiritual entity, the Church itself holds no assets or
 6 property. *Id.* ¶ 4. It does not do business in any state, nor is it registered to do so. *Id.* The
 7 Church has no employees and it has no money from which to pay salaries, employment taxes, or
 8 benefits. *Id.* Thus, if a judgment were rendered against the Church, it would be futile because the
 9 Church has absolutely no assets or property from which such a judgment could be satisfied. *Id.*
 10

11 **F. Plaintiff Has Purported to Serve the Church by Serving a Former Clergy Member.**

12 Even if the Church had the capacity to be sued, plaintiff has not accomplished effective
 13 service of process.

14 On Sunday, October 22, 2006, plaintiff attempted to serve the Church by serving Gordon
 15 Conger. Mr. Conger is a former clergy member of the Church. Although it is questionable
 16 whether Mr. Conger is an “agent” of the Church, this motion does not contest his status. Rather,
 17 COP contends that no service can be made on *any* agent because the Church is not “doing
 18 business” in Washington.

19 **III. EVIDENCE RELIED UPON**

- 20
- 21 1. Declaration of Michael Rosenberger.
 - 22 2. Declaration of Paul D. Rytting.

23 **IV. ARGUMENT**

24 The factual setting from which this motion arises is novel. In most such cases, a personal
 25 injury plaintiff attempts to join the asset-rich corporate entity affiliated with a religious
 26 organization, and in some cases the corporate entity disputes responsibility for the torts of the
 27

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1 actor in question. Here, COP does not dispute that it will be liable for, and pay, any judgment
 2 resulting from the negligence of Church agents acting within the scope of their authority.
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5 Paradoxically, Plaintiff here seeks to maintain an action against an unincorporated
 6 religious organization with no assets and for no reason bearing upon liability or damages.
 7 Plaintiff's counsel seek to maintain the fiction of the Church as a necessary party so as to
 8 preserve their discretion to defeat diversity jurisdiction when they perceive it in their interest to
 9 do so.
 10
 11

12 **A. The Church Has No Legal Status and is not a Proper Party.**

13 As a purely spiritual association with no worldly affairs, the Church cannot be sued and
 14 thus is not a proper party. Once a religious entity chooses to incorporate utilizing a valid and
 15 recognized form of legal incorporation, one can bring suit *only* against the corporate form:
 16
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18 [W]henever a religious society incorporates, it assumes a dual
 19 existence; two distinct entities come into being -- *one, the church,*
 20 *which is conceived and endures wholly free from the civil law*, and
 21 the other, the corporation created through the state prescribed
 22 method. Each remains separate although closely allied. *The*
 23 *components of the ecclesiastical interrelationship between the*
 24 *parent church and the subordinate body cannot be permitted*
 25 *to serve as a bridge capable of reaching the non-secular parent*
 26 *in a civil proceeding.*
 27
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29 *Folwell v. Bernard*, 477 So. 2d 1060, 1063 (Fla. App. 1985) (emphasis added) (citation omitted).
 30
 31

32 Other courts concur with *Folwell* and expressly acknowledge and respect the existence of two
 33 separate yet related entities: the spiritual or ecclesiastical entity that cannot be sued and over
 34 which courts have no jurisdiction, and the temporal or corporate entity which is subject to
 35 judicial control in accordance with statutory and constitutional restrictions.⁶
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1 Where, as here, a religious denomination's corporate entity holds the denomination's
 2 assets and is fully capable of serving as the defendant in a lawsuit – in other words, where the
 3 religious entity is focused entirely on religious matters – courts should and must honor the
 4 corporate structure and deny attempts to drag the unincorporated religious entity into personal
 5 injury lawsuits.
 6
 7
 8

9 **B. The Church Is not an "Unincorporated Association."**

10 The Church has often been characterized or characterized itself as an unincorporated
 11 association. While this is somewhat descriptive insofar as it distinguishes it from an
 12 incorporated entity, it is not accurate in the legal sense.
 13
 14

15 The term "unincorporated association"—commonly associated with entities such as labor
 16 unions and homeowners' associations—refers to an association that operates absent any
 17 corporate form. *EEOC v. St. Francis Xavier Parochial School*, 77 F. Supp. 2d 71 (D.D.C. 1999).
 18 In that case, plaintiff brought a claim arising under the Americans with Disabilities Act against a
 19 Catholic church and school that were part of a parish within the incorporated Archdiocese of
 20 Washington. Plaintiff alleged that the school and church were unincorporated associations that
 21 were properly joined as parties under Federal Rule 17(b). The court disagreed with plaintiff's
 22 starting premise that the church and school were "unincorporated associations."
 23
 24

25 While all of these definitions describe an unincorporated association as a
 26 collection of persons working together for a common objective, they also describe
 27 it as an entity operating without a corporate charter. The Court finds this latter
 28 characteristic determinative of whether an unincorporated division of a
 29
 30

31 in nature, and civil courts cannot decide any questions concerning this entity."); *Sorenson v. Logan*, 32 Ill.App.2d
 32 294, 295-96, 177 N.E.2d 713 (1961) (same); *Koch v. Estes*, 146 Misc. 249, 252, 262 N.Y.S. 23 (1933) ("A religious
 33 corporation has a double aspect, the one spiritual, the other temporal. With regard to the former, courts have no
 34 concern"); *Willis v. Davis*, 323 S.W.2d 847 (Ky. Ct. App. 1959) ("such a corporation is civil in nature and is an entity
 35 distinguishable from an ecclesiastical society or association, the one having jurisdiction over the temporal or
 36 secular and the other over ecclesiastical or spiritual affairs").

CORPORATION OF THE PRESIDENT OF THE CHURCH OF
 JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
 DISMISS - 11

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 Fax (206) 467-6292

1 corporation meets the definition of an unincorporated association. Unlike the
 2 unincorporated associations defined above, a division of a corporation does
 3 operate with a charter -- the charter of the larger corporation.
 4

5 *EEOC v. St. Francis Xavier*, 77 F. Supp. at 77. While the Church is not a division of COP, the
 6 principle is equally applicable—the Church has established a corporation for carrying out its
 7 worldly affairs.
 8

9 The district court in *EEOC v. St. Francis Xavier* also reasoned that the unincorporated
 10 entities' lack of assets buttressed the conclusion they were not proper parties.
 11

12 This construction of "unincorporated association" is also consistent with the
 13 rationale for denying unincorporated divisions of a corporation the capacity to be
 14 sued in the first place. As discussed, this rationale arises out of an unincorporated
 15 division's lack of independent assets: because any judgment against it must be
 16 satisfied out of the corporation's assets, the corporation must be named, and
 17 adjudged liable, as a party.
 18

19 *Id.* at n. 9. Similarly, here, Plaintiff knew he needed to join COP, as it is the Church entity with
 20 assets. Given COP's presence in this case, there is no reason to grant the unincorporated Church
 21 the capacity to be sued.
 22

23 COP concedes that this state permits unincorporated associations to be sued, as do many
 24 other states. This is a function of necessity. For example, a person with a grievance against a
 25 labor union would have no recourse if it (the labor union) was not subject to suit as an
 26 unincorporated association. However, such is not the case here—Plaintiff rights, if any, can be
 27 fully vindicated without the presence of the Church in this litigation. The Church is not an
 28 "unincorporated association"—as that term is used to describe unions and other organizations
 29 lacking corporate form—and thus lacks capacity to be sued.
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CORPORATION OF THE PRESIDENT OF THE CHURCH OF
 JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
 DISMISS - 12

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1 C. The Church Must Be Dismissed Because it Has Not and Cannot Be Served—the
 2 Church is not “Doing Business” in Washington and thus the Summons and
 3 Complaint Cannot be Served upon a Church agent.

4
 5 As noted above, Plaintiff purported to serve the Church by serving a former clergy
 6 member, Mr. Conger. For purposes of this motion, the Church does not dispute that Mr. Conger
 7 is the Church’s “agent.” COP contends, rather, that if the Church were a proper party, the
 8 purported service on an agent is improper. The only way to serve the Church would be to serve
 9 all its members. The Church should thus be dismissed—it has not been served and, as a practical
 10 matter, the Church’s continued presence on the caption would be a fiction because its 245,000
 11 members in Washington cannot practicably be served.
 12
 13

14 The Washington statute governing service of process contains only one subsection that
 15 mentions associations. The statute provides that the summons shall be served by delivering a
 16 copy as follows:

17
 18 (10) If the suit be against a foreign corporation or non-
 19 resident joint stock company, partnership or *association doing*
 20 *business* within the State, to any agent, cashier or secretary thereof.
 21
 22 ...

23
 24 (15) In all other cases, to the defendant personally, or by
 25 leaving a copy of the summons at his house or his or her usual
 26 abode with some person of suitable age and discretion then
 27 resident therein.

28
 29
 30 R.C.W. 4.28.080 (10) (15) (emphasis added). Thus, even if this Court were to hold that the
 31 Church is an unincorporated association with capacity to be sued, it is not “doing business” in
 32 the State and thus service cannot be made upon the Church by serving a Church agent. Rather,
 33 like a social club that does not “do business” in the State, the Church would need to be served by
 34 serving all its members.
 35
 36

37 CORPORATION OF THE PRESIDENT OF THE CHURCH OF
 38 JESUS CHRIST OF LATTER-DAY SAINTS’ MOTION TO
 39 DISMISS - 13

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1 As used in R.C.W. 4.28.080, the phrase "doing business" is not defined and COP is
 2 unaware of any cases applying this phrase in the context of service upon an "association."
 3 However, it has been interpreted and applied in the context of disputes concerning personal
 4 jurisdiction over foreign corporations. "Although [RCW 4.28.080(10)] appears only to address
 5 service of process, the Washington Supreme Court has held that it confers general jurisdiction
 6 over a nonresident defendant 'doing business' in this state, that is, transacting *substantial and*
 7 *continuous business* of such character as to give rise to a legal obligation." *Mbm Fisheries v.*
 8 *Bollinger Mach. Shop & Shipyard*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991) (emphasis
 9 added). As discussed above, the Church has no employees, enters no contracts and generally
 10 conducts *no* business in the State of Washington. Surely, it does not conduct "substantial and
 11 continuous" business triggering the statute permitting service upon an agent.
 12

13 Moreover, other states have refused to apply similar statutes to non-business associations.
 14 For example, the Ninth Circuit, applying Nevada law, observed that a Nevada statute providing
 15 for service upon two or more persons "associated in any business" does not apply to
 16 unincorporated trade associations. *Strotek Corp. v. Air Transport Association of America*, 300
 17 F.3d 1129, 1134 n.2 (9th Cir. 2002). As the court stated, "neither does it seem logical that it
 18 would be [applied to trade associations], for a trade association conducts no 'business' and its
 19 members have no joint liability." *Id.*

20 Similarly, in *Cox v. Thee Evergreen Church*, 836 S.W.2d 167 (Tex. 1992), the Texas
 21 Supreme Court held that a statute applicable to associations "doing business" in Texas did not
 22 apply to unincorporated charitable organizations. The Texas statute contains language similar to
 23 that contained in Washington's service of process statute:
 24

25 COPyRIGHT OF THE PRESIDENT OF THE CHURCH OF
 26 JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
 27 DISMISS - 14

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 30 Seattle, WA 98154-1007
 31 Phone (206) 467-6477
 32 Fax (206) 467-6292

1 Any incorporated joint stock company or association, whether
 2 foreign or domestic, doing business in the State, may sue or be
 3 sued in any court of this state having jurisdiction of the subject
 4 matter in its company or distinguishing name; . . .
 5

6 Tex. Rev. Civ. Stat. Ann. Article 6133.
 7

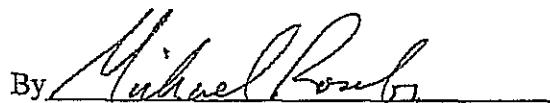
8 In sum, even if this Court disagrees with COP's position that the Church is not a proper
 9 party, the Court should conclude the Church is not "doing business" in this state and therefore
 10 service of process cannot be made on a Church agent as provided in R.C.W. 4.28.080 (10).
 11

12 **V. CONCLUSION**
 13

14 For the reasons stated above, COP respectfully requests that this Court dismiss the
 15 Church from this action.
 16

17 DATED this 11th day of January, 2006.
 18

19 **GORDON MURRAY TILDEN LLP**
 20

21 By 
 22 Charles C. Gordon, WSBA #1773
 23 Jeffrey I. Tilden, WSBA #12219
 24 Michael Rosenberger, WSBA #17730
 25 Attorneys for Defendants
 26 Corporation of the President of the Church
 27 of Jesus Christ of Latter-Day Saints
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CORPORATION OF THE PRESIDENT OF THE CHURCH OF
 JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
 DISMISS - 15

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10 The Honorable William L. Downing
11
12 SUPERIOR COURT OF THE STATE OF WASHINGTON
13 FOR KING COUNTY
14

15 ROB RINDE f/k/a ROBERT LARRY LEROY
16 PITSOR, JR.,
17

18 Plaintiff,
19
20 v.
21

22 THE CORPORATION OF THE PRESIDENT
23 OF THE CHURCH OF JESUS CHRIST OF
24 LATTER-DAY SAINTS, a Utah corporation
25 sole; and the "MORMON CHURCH" THE
26 CHURCH OF JESUS CHRIST OF LATTER-
27 DAY SAINTS, an unincorporated association,
28

29 Defendants.
30

31 NO. 06-2-09825-1 SEA
32

33 [PROPOSED] ORDER GRANTING
34 DEFENDANT'S MOTION TO
35 DISMISS AND/OR FOR SUMMARY
36 JUDGMENT
37

38 THIS MATTER was brought before the Court upon the motion of defendant Corporation
39 of the President of the Church of Jesus Christ of Latter-Day Saints to dismiss and/or for
40 summary judgment seeking dismissal of defendant The Church of Jesus Christ of Latter-day
41 Saints. The Court has considered the arguments of counsel and the following submissions:

- 42 1. COP's memo in support;
43
44 2. Declaration of Michael Rosenberger and attached exhibits;

45

ORDER - 1

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Fax (206) 467-6292

3. Declaration of Paul Rytting;
4. Plaintiff's Opposition Brief;
5. COP's Reply Brief
6. _____
- 7.

Based upon the foregoing, it is hereby:

ORDERED, ADJUDGED AND DECREED that the motion is GRANTED; The Church of Jesus Christ of Latter-day Saints is dismissed from this action with prejudice.

DATED this _____ day of _____, 2007.

The Honorable William L. Downing

Presented by:

GORDON MURRAY TILDEN LLP

By Yuhai Li
Charles C. Gordon, WSBA #1773
Jeffrey I. Tilden, WSBA #12219
Michael Rosenberger, WSBA #177
Attorneys for Defendant

ORDER - 2

GORDON MURRAY TILDEN LLP
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Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

FILED

2007 JAN 11 PM 4:50

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KINGROB RINDE F/K/A ROBERT LARRY LEROY PITSON,
JR.,

PLAINTIFF,

v.

CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS,

DEFENDANT.

CASE NO. 06-2-09825-1 SEA
NOTICE FOR HEARING
SEATTLE COURTHOUSE ONLY
(Clark's Action Required) (NTHG)

TO: THE CLERK OF THE COURT and to all other parties listed on Page 2:
 PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: FEBRUARY 9, 2007

Day of Week: Friday

Nature of Motion: MOTION TO DISMISS

CASES ASSIGNED TO INDIVIDUAL JUDGES - Seattle

If oral argument on the motion is allowed (LR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice. Working Papers: The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's copy. *Deliver Judge's copies to Judges' Mailroom at C203.*

 Without oral argument (Mon - Fri) With oral argument Hearing

Date/Time: February 9, 2007 at 11:15 a.m.

Judge's Name: WILLIAM L. DOWNING Trial Date: September 4, 2007

CHIEF CRIMINAL DEPARTMENT - Seattle in E1201

Bond Forfeiture 3:15 pm, 2nd Thur of each month
 Certificates of Rehabilitation- Weapon Possession (Convictions from Limited Jurisdiction Courts) 3:30 First Tues of each month.

CHIEF CIVIL DEPARTMENT - Seattle - (Please report to E713 for assignment)

Deliver working copies to Judges' Mailroom, Room C203. In upper right corner of papers write "Chief Civil Department" or judge's name and date of hearing

 Extraordinary Writs (Show Cause Hearing) (LR 98.40) 1:30 p.m. Tues/Wed -report to Room E713 Supplemental Proceedings (1:30 pm Tues/ Wed) (LR 69) DOL Stays 1:30 pm Tues/Wed Motions to Consolidate with multiple judges assigned (without oral argument) (LR 40(a)(4))

Non-Assigned Cases:

- Non-Dispositive Motions M-F (without oral argument)
- Dispositive Motions and Revisions (1:30 pm Tues/Wed)
- Certificates of Rehabilitation (Employment) 1:30 pm Tues/Wed (LR 40(2)(B))

You may list an address that is not your residential address where you agree to accept legal documents.

Sign: Michael Rosenberger Print/Type Name: Michael Rosenberger
WSBA#: 17730

Attorney for: Defendant

Address: 1001 Fourth Avenue, Suite 4000, Seattle, WA 98154-1007

Telephone: (206) 467-6477

Date: January 11, 2007

DO NOT USE THIS FORM FOR FAMILY LAW, EX PARTE OR RALJ MOTIONS.

Exhibit Page 316

LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE

Name:	Michael T. Pfau	Name:	Timothy D. Kosnoff
Address:	Michelle A. Menely Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP 600 University, Suite 2100 Seattle, WA 98101-4185	Address:	Law Offices of Timothy D. Kosnoff One Union Square 600 University Street, Suite 2101 Seattle, WA 98101
WSBA#:	24649	Attorney For:	Plaintiff
Telephone#:	(206) 676-7500	WSBA#:	16586
		Attorney For:	Plaintiff
		Telephone#:	(206) 676-7610
Name:		Name:	
Address:		Address:	
WSBA#:		Attorney For:	
Telephone#:		WSBA#:	
		Attorney For:	
		Telephone#:	
Name:		Name:	
Address:		Address:	
WSBA#:		Attorney For:	
Telephone#:		WSBA#:	
		Attorney For:	
		Telephone#:	

IMPORTANT NOTICE REGARDING CASES

Party requesting hearing must file motion & affidavits separately along with this notice. List names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than six court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The SEATTLE COURTHOUSE is in Seattle, Washington at 516 Third Avenue. The Clerk's Office is on the sixth floor, room E609. The Judges' Mailroom is Room C203.

Exhibit Page 317

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The Honorable William L. Downing

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

ROB RINDE f/k/a ROBERT LARRY LEROY
PITSOR, JR.,

NO. 06-2-09825-1 SEA

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; a/k/a the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

DECLARATION OF PAUL D.
RYTTING IN SUPPORT OF
DEFENDANT CORPORATION OF
THE PRESIDENT OF THE CHURCH
OF JESUS CHRIST OF LATTER-
DAY SAINTS' MOTION TO
DISMISS AND/OR MOTION FOR
SUMMARY JUDGMENT

Defendants.

I, Paul D. Ryting, declare as follows:

1. My name is Paul D. Ryting. I am over the age of eighteen and I make these statements based upon personal knowledge.
2. I have been a member of the Church of Jesus Christ of Latter-Day Saints ("the Church") all of my life. I currently function as the Risk Manager for the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP") and am familiar with the

Exhibit Page 318

DECLARATION OF PAUL D. RYTTING IN SUPPORT OF
DEFENDANT CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS'
MOTION TO DISMISS AND/OR MOTION FOR SUMMARY
JUDGMENT - 1

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Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292

ORIGINAL

1 legal organization of COP and the Church. I have worked in similar or related positions for
 2 fifteen years.
 3

4 3. For approximately 75 years, COP has been incorporated as a corporation sole
 5 under Utah law. COP has its headquarters in Salt Lake City, Utah. It hires and pays
 6 employees, owns significant assets and carries out church business.
 7

8 4. The Church, in contrast, exists solely as an ecclesiastical organization. In its
 9 unincorporated form, the Church holds no assets or property. It does no business in any state,
 10 nor is it registered to do so. The Church has no employees, and has no money from which to pay
 11 salaries. The Church has no assets or property from which a judgment can be satisfied.
 12

13 5. The Church has more than 27,000 congregations. There are 12.6 million
 14 members worldwide, with 245,665 in the State of Washington as of December 31, 2005.
 15

16 6. The Church has no corporate identity and no articles of association, bylaws, or
 17 rules governing its legal existence. Instead, the Church is organized and governed by scripture,
 18 by modern revelation, and by ecclesiastical doctrines and beliefs of the Church.
 19

20 7. Under Church doctrine, the Church functions as the Kingdom of God on earth.
 21 From time to time, the president or other "general authorities" of the Church provides spiritual
 22 and doctrinal guidance to local Church leaders and to the general membership. Local Church
 23 leaders also perform functions similar to those performed at other religious organizations,
 24 including blessings, baptisms, confirmations, ordinations, and the calling of members to serve in
 25 ///
 26 ///
 27 ///
 28

29 Exhibit Page 319

30 DECLARATION OF PAUL D. RYTING IN SUPPORT OF
 31 DEFENDANT CORPORATION OF THE PRESIDENT OF THE
 32 CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS'
 33 MOTION TO DISMISS AND/OR MOTION FOR SUMMARY
 34 JUDGMENT - 2

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 37 Seattle, WA 98154-1007
 38 Phone (206) 467-6477
 39 Fax (206) 467-6292

1 volunteer ecclesiastical positions.
2

3 I declare under penalty of perjury that the foregoing is true and correct.
4

5 SIGNED at Salt Lake City, Utah, this 2nd day of JANUARY, 2007.
6

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10 PAUL D. RYTTING
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Exhibit Page 320,

DECLARATION OF PAUL D. RYTTING IN SUPPORT OF
DEFENDANT CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS'
MOTION TO DISMISS AND/OR MOTION FOR SUMMARY
JUDGMENT - 3

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2007 JAN 11 PM 4:50KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.The Honorable William L. Downing
Hearing Date: February 9, 2007 at 11:15 a.m.SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTYROB RINDE f/k/a ROBERT LARRY LEROY
PITSOR, JR.,

NO. 06-2-09825-1 SEA

Plaintiff,

DECLARATION OF MICHAEL
ROSENBERGER IN SUPPORT OF
CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS' MOTION TO DISMISS
AND/OR MOTION FOR SUMMARY
JUDGMENT

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole; and the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendants.

Michael Rosenberger, being duly sworn on oath, deposes and says:

1. I am one of the attorneys representing the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints in this matter. I am also among the attorneys representing COP in other suits brought by plaintiffs' counsel relating to alleged sexual abuse of minors. I make this declaration based upon personal knowledge.

2. Attached as Exhibit 1 is a true and accurate copy of the Order in this matter dated June 30, 2006, issued by Judge Zilly of the Western District of Washington.

DECLARATION OF MICHAEL ROSENBERGER IN SUPPORT
OF CORPORATION OF THE PRESIDENT OF THE CHURCH
OF JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
DISMISS AND/OR MOTION FOR SUMMARY JUDGMENTGORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Phone (206) 467-6477
Fax (206) 467-6292**ORIGINAL**

3. Attached as Exhibit 2 is a true and accurate copy of plaintiff's reply brief in support of his motion to amend the complaint and motion to remand.

4. Attached as Exhibit 3 is a true and accurate copy of COP's proposed jury instruction in *R.K. v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints* regarding the relationship of COP and the Church.

5. Attached as Exhibit 4 is a true and accurate copy of the Court's instruction in *R.K. v. COP*, relating to the relationship of COP and the Church.

6. Attached as Exhibit 5 is a true and accurate copy of the complaint recently filed in the District of New Jersey in the matter of *Ames v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*.

7. Attached as Exhibit 6 is a true and accurate copy of an excerpt from the demand letter in *Ames* showing that plaintiff's counsel, Messrs. Kosnoff and Pfau, represent Mr. Ames.

8. Attached as Exhibit 7 is a true and accurate copy of the complaint in *Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints.*

I declare under the laws of the State of Washington and of the United States that the foregoing is true and correct.

DATED this 11th day of January, 2007.


Michael Rosenberger

DECLARATION OF MICHAEL ROSENBERGER IN SUPPORT
OF CORPORATION OF THE PRESIDENT OF THE CHURCH
OF JESUS CHRIST OF LATTER-DAY SAINTS' MOTION TO
DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT - 2

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EXHIBIT
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cc: V. Keech
J. Reid
R. Henderson
CC.L
APL
JIT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY
LEROY PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS, a Utah
corporation sole, aka the "MORMON
CHURCH" THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS, an
unincorporated association,

Defendant.

No. C06-556Z

ORDER

This matter comes before the Court on Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants and Motion to Remand, docket no. 5. The Court being fully advised now GRANTS the motions as set forth in this Order:

Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants

Plaintiff, Rob Rinde, failed to plead the existence of two defendants in his Complaint. See Compl., docket 3. The Court therefore construes Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants as a motion to join the "Mormon Church" The Church of Jesus Christ of Latter-Day Saints" (hereinafter referred to as the "Mormon Church") as a defendant.

MINUTE ORDER 1-

1 The Mormon Church is an unincorporated association with members in all fifty states.
2 Rytting Decl., docket 7, ¶ 5; Def.'s Opp'n, docket 6, at 2. It is well-established that the
3 citizenship of unincorporated associations is the citizenship of each of the individual
4 members of the association. Johnson v. Columbia Props. Anchorage, 437 F.3d 894, 899 (9th
5 Cir. 2006). Thus, the Mormon Church is a non-diverse defendant.

6 "[T]he proper standard for deciding whether to allow post-removal joinder of a
7 diversity-destroying defendant is set forth in 28 U.S.C. § 1447(e)." Boon v. Allstate Ins.
8 Co., 229 F. Supp. 2d 1016, 1020 n.2 (C.D. Cal. 2002). Section 1447(e) provides: "If after
9 removal the plaintiff seeks to join additional defendants whose joinder would destroy subject
10 matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to
11 the State court." 28 U.S.C. § 1447(e). Joinder of a diversity-destroying defendant pursuant
12 to Section 1447(e) is left to the discretion of the district court. Newcombe v. Adolf Coors
13 Co., 157 F.3d 686, 691 (9th Cir. 1998).

14 Having considered the six factors described in Boon, 229 F. Supp. 2d at 1019-20, the
15 Court concludes that permitting joinder under Section 1447(e) is appropriate in the present
16 case. Permitting joinder of the Mormon Church would facilitate a just adjudication of the
17 matter. Conversely, disallowing joinder would hinder Mr. Rinde from asserting his rights
18 against an entity allegedly involved in the breach of duties and related causes of action. See
19 IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, 125 F. Supp. 2d 1008, 1012
20 (N.D. Cal. 2000). The absence of the Mormon Church as a named defendant could preclude
21 Mr. Rinde from recovering damages for any fault attributable to the Mormon Church. See
22 Kottler v. Wetherington, 136 Wn.2d 437, 445-47 (1998). In contrast, "[t]here will be little
23 prejudice to Defendant[] from allowing amendment and remand at such an early stage in the
24 case." Palestini v. Gen. Dynamics Corp., 193 F.R.D. 654, 657 (S.D. Cal. 2000). Although
25 Defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints
26 ("COP") argues that Mr. Rinde's sole purpose for seeking joinder is to destroy diversity

MINUTE ORDER 2-

1 jurisdiction, the Court “declines to impute an improper motive to Plaintiff simply because
2 Plaintiff seeks to add a non-diverse defendant post-removal.” IBC Aviation Servs., 125 F.
3 Supp. 2d at 1012.

4 COP also contends that the Mormon Church is not a proper party because once a
5 religious entity has chosen to incorporate, only the corporate form may be sued. The cases
6 cited by COP, however, merely support the general rule that religious controversies are not
7 the proper subject of civil court inquiry. See, e.g., Islamic Ctr. of Harrison, Inc. v. Islamic
8 Science Found., Inc., 628 N.Y.S. 2d 179, 179 (App. Div. 1995). Although the Free Exercise
9 Clause of the United States Constitution “restricts the government’s ability to intrude into
10 ecclesiastical matters or to interfere with a church’s governance of its own affairs,” Bollard
11 v. California Province of the Soc’y of Jesus, 196 F.3d 940, 945 (9th Cir. 1999), a religious
12 association does not operate wholly free from civil law. “The First Amendment does not
13 provide churches with absolute immunity to engage in tortious conduct. So long as liability
14 is predicated on secular conduct and does not involve the interpretation of church doctrine or
15 religious beliefs, it does not offend constitutional principles.” C.J.C. v. Corp. of Catholic
16 Bishop of Yakima, 138 Wn.2d 699, 728 (1999) (citing Sanders v. Casa View Baptist Church,
17 134 F.3d 311, 366 (5th Cir. 1998)).

18 For the foregoing reasons, the Court GRANTS Plaintiff’s Motion to Amend
19 Complaint to Clarify Status of Defendants, docket no. 5. The Clerk is directed to file the
20 Proposed Amended Complaint, attached as Exhibit A to the Kosnoff Decl., docket no. 5.

21 Plaintiff’s Motion to Remand

22 Diversity jurisdiction requires complete diversity of citizenship between the parties to
23 an action. 28 U.S.C. § 1332(a); Cardon v. Arkoma Assocs., 494 U.S. 185, 187 (1990). Once
24 a non-diverse defendant is joined, remand becomes mandatory: “[a] district court may not
25 allow joinder of a non-diverse party and retain jurisdiction.” Stevens v. Brink’s Home
26 Security, Inc., 378 F.3d 944, 949 (9th Cir. 2004); see also 28 U.S.C. § 1447(e). Because the

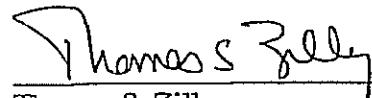
MINUTE ORDER 3-

1 Court is granting Plaintiff's motion to join the Mormon Church as a non-diverse defendant,
2 remand is mandatory. Accordingly, the Court GRANTS the Plaintiff's Motion to Remand,
3 docket no. 5.

4 The Clerk is directed to remand the case to King County Superior Court, Case No. 06-
5 2-09825-1SEA, in accordance with this Order.

6 IT IS SO ORDERED.

7 Filed and entered this 30th day of June, 2006.

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10 Thomas S. Zilly

11 United States District Judge

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MINUTE ORDER 4-

EXHIBIT
2

f/k/a
v. Koob
T. Reid
R. Austin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY
PITSOR, JR.

Plaintiff,

vs.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, aka the "MORMON CHURCH" THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS, an unincorporated association,

Defendant.

NO. 2:06-CV-00556TSZ

PLAINTIFF'S REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION
TO AMEND COMPLAINT TO CLARIFY
STATUS OF DEFENDANTS AND
MOTION TO REMAND

NOTED FOR: FRIDAY, MAY 26, 2006

I. INTRODUCTION

In its opposition, defendant COP takes the position that plaintiff is attempting to add a new party to this action in order to defeat diversity. However, as was indicated in plaintiff's original moving papers, plaintiff is not moving to add a new party to this action. Instead, plaintiff simply moved this Court to amend his complaint to clarify that he had instituted an action against two separate entities – (1) The Corporation of the President of the Church of

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 1 of 8
(2:06-CV-00556TSZ)

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1 Jesus Christ of Latter-day Saints and (2) The Church of Jesus Christ of Latter-Day Saints,
2 a/k/a the Mormon Church itself. Plaintiff reiterates that request in this reply to defendant's
3 opposition.

4 **II. STATEMENT OF RELEVANT FACTS**

5 On March 22, 2006, plaintiff filed an action in the King County Superior Court and, in
6 doing so, named two defendants – COP and the Mormon Church.¹ On or about April 20,
7 2006 plaintiff received a Notice of Appearance on behalf of defendant COP and a Notice of
8 Removal (Diversity Jurisdiction). Shortly before the Notice of Appearance and Notice of
9 Removal was filed, a telephone conversation occurred between plaintiff's counsel, Tim
10 Kosnoff, and defense counsel, Chuck Gordon. During that conversation, Mr. Gordon advised
11 that it was COP's intention to remove the action based on diversity. In response, plaintiff's
12 counsel specifically advised Mr. Gordon that (a) the Mormon Church was a defendant and
13 (b) the issue of whether there was diversity of citizenship in an action in which the Mormon
14 Church was a named defendant had already been resolved by a United States District Court
15 Judge (and that the judge had found that the inclusion of the Mormon Church as a defendant
16 indeed destroyed diversity).² As a result of the prior ruling on this issue, plaintiff requested
17 that COP not take any steps to remove this action.³ Unfortunately, COP declined
18 necessitating this motion.

19 **III. ARGUMENT**

20 **A. DEFENDANT'S RELIANCE ON CASE LAW PERTAINING TO WHEN A PLAINTIFF MAY
21 ADD AN ADDITIONAL PARTY IS MISPLACED.**

22 As explained in the moving papers, plaintiff intended to name, and did name, two
23 defendants in this action – COP and the Mormon Church itself. Defendant COP took the

24
25 ¹ See Plaintiff's Complaint, ¶2.2.

² Declaration of Timothy D. Kosnoff, ¶2 & 3.

³ Id.

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 2 of 8
(2:06-CV-00556TSZ)
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position that only one defendant had been named and, based on that position, removed the action to this Court. While not agreeing that plaintiff failed to adequately plead the existence of two defendants, plaintiff determined that the best way to resolve the dispute was to amend the complaint to clarify the allegations. However, at no point, did plaintiff seek to name an additional party.⁴ Consequently, defendant's reliance on case law pertaining to when a plaintiff may add an additional party is misplaced.

B. PLAINTIFF'S CLAIMS AGAINST THE MORMON CHURCH ARE NOT FUTILE

Defendant asserts that because plaintiff has named COP in this action, the inclusion of the Mormon Church is futile. However, plaintiff, at this juncture, is not sure whether COP will defend this claim by asserting that it did not prescribe the policies and practices of the local wards of the Mormon Church or that it is not the entity responsible for the acts or inactions of the Bishops, Stake Presidents and other officials involved in this case. If COP so defends, and if COP is successful in asserting such defenses, in the absence of the Mormon Church as a named defendant, plaintiff could be left with an "empty chair" defendant. Thus, faced with such possible defenses the inclusion of the Mormon Church is not futile to plaintiff's pursuit of his claims.

In addition, the fact that the Mormon Church does or does not have any assets available to satisfy a judgment does not render the inclusion of the Mormon Church "futile." The plaintiff's claims arise out of the sexual abuse he suffered as a child. It is inconceivable that the plaintiff would be deemed to be partially at fault for his harms. Thus, liability against the defendants will, presumably, be joint and several pursuant to RCW 4.22.070(b).⁵

⁴ See Motion to Amend and Remand, on file herein.

⁵ However, if COP is willing to stipulate that all the stake presidents, bishops and other hierachal officials are agents of COP and that it will not assert an empty chair defense with respect to the persons involved in this case (and its officials) plaintiff will withdraw this motion.

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 3 of 8

(2:06-CV-00556TSZ)

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Finally, plaintiff is not "forum" shopping. Instead, absent a fraudulent joinder a plaintiff has the right to select the forum, to elect whether to sue joint tortfeasors and to prosecute his own suit in his own way to final determination." *Parks v. New York Times*, 308 F.2d 474, 478 (5th Cir. 1962). Here, plaintiff chose to bring his action in King County Superior Court. Prior to the filing of the Notice of Removal, COP was advised of plaintiff's position with regard to the existence of two named defendants and that diversity did not exist. In this circumstance, plaintiff's choice of where to file an action cannot reasonably be considered "forum" shopping.

C. REPORTED CASES INDICATE THAT THE MORMON CHURCH HAS SUED AND BEEN SUED.

Defendant asserts that because COP exists, the Mormon Church is not an entity that can sue or be sued. In support of this assertion, COP asserts it is the entity that has employees and possesses assets (and that the Mormon Church, itself, has none).⁶ However, reported cases from around the country indicate that the Mormon Church itself has been involved in litigation, both as a plaintiff and as a defendant, on numerous occasions, that it has employees and that it possesses assets.

The Mormon Church is the named plaintiff in the following actions:

- *Church of Jesus Christ of Latter-day Saints vs. Jefferson County*, 741 F.Supp. 1522 (N.D. Ala. 1990) ("church which unsuccessfully applied for rezoning to allow development of land for place of worship filed action against county....")
- *Church of Jesus Christ of Latter-day Saints vs. Jefferson County, Alabama*, 721 F.Supp. 1212 (N.D. Ala. 1989) ("vendors of property and purchaser, a church, brought action challenging denial of zoning change to all construction of worship facility on the property....")

⁶ See Opposition to Motion to Amend/Remand, pg. 2, ll. 21-33.

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 4 of 8
(2:06-CV-00556-TSZ)

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- 1 • *Stotts v. Church of Jesus Christ of Latter-Day Saints vs. Lindsey*
2 *Constr. Co.*, 882 P.2d 1106 (Okla. App. 1994) (in defending claim
against it, church defendant instituted a third party complaint).

3 The Mormon Church, itself, was the named defendant in the following cases:

- 4 • *Davis v. Church of Jesus Christ of Latter-Day Saints*, 852 P.2d 640
5 (Mont. 1993) (defended fraud claim)
- 6 • *Hotaling v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d
7 1999 (4th Cir. 1997) (defended copyright infringement action);
- 8 • *Church of Jesus Christ of Latter-Day Saints v. Superior Court of*
9 *State of Arizona*, 714 P.2d 431 (Ariz. App. 1985) (defending claim
10 by parents of child who was killed after being struck by an
automobile when he rode his bicycle from church parking lot into
city street);
- 11 • *Church of Jesus Christ of Latter-Day Saints v. Superior Court of*
12 *State of Arizona*, 764 P.2d 759 (Ariz. App. 1988) (defending claim
by mother of victim of child abuse).⁷

13 The reported cases indicate that the Mormon Church, itself, has employees:

- 14 • *Church of Jesus Christ of Latter-day Saints vs. Industrial*
15 *Commission of Arizona*, 724 P.2d 581 (Ariz. App. 1986) (claimant
16 was "injured while employed by the Church of Jesus Christ of
Latter-Day Saints. . . .");
- 17 • *Church of Jesus Christ of Latter-Day Saints vs. Industrial Comm'n*
18 *of Utah*, 590 P.2d 328 (Utah 1979) (case involved workman's
19 compensation claim by a person who was "employed by Plaintiff
[the Church]");
- 20 • *Schmoyer v. Church of Jesus Christ of Latter-Day Saints*, 343
21 S.E.2d 551 (N.C. App. 1986) (plaintiff's-decedent was "employed
as a custodian at the Church of Jesus Christ of Latter-Day Saints.")

22 Finally, the issue of whether the Mormon Church itself has no assets is called into
23 question by at least one reported case: *Church of Jesus Christ of Latter-Day Saints v.*

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⁷ For the Court and counsel's reference, the first page of each of these decisions is attached to the declaration of Timothy D. Kosnoff as Exhibit A.

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 5 of 8
(2:06-CV-00556TSZ)

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1 Scarborough, 189 F.2d (1951) (plaintiff brought action against the Church to "recover \$7000
 2 which was on deposit with the Church. . . .")
 3

4 **D. THE MORMON CHURCH CAN BE SERVED WITH PROCESS.**

5 RCW 4.28.080 provides the process by which a defendant can be served with process.
 6

7 That statute provides, in pertinent part:
 8

9 (10) If the suit be against a foreign corporation. . . . association
 10 doing business within this state, to any agent, cashier or
 11 secretary thereof.
 12

13 The Mormon Church has multiple agents within this state – any Bishop or other clergy
 14 member would presumably suffice. Furthermore, Gordon B. Hinckley is the President of the
 15 Mormon Church. Service could be accomplished by personal service on Mr. Hinckley.
 16

17 **E. COP HAS ADMITTED THAT THE INCLUSION OF THE MORMON CHURCH AS A
 18 DEFENDANT DESTROYS DIVERSITY.**

19 In the case of *Scott v. Corporation of the Presiding Bishop of the Church of Jesus
 20 Christ of Latter-Day Saints*, U.S.D.C., District of Oregon (Cause No. 98-366AA) the plaintiff
 21 named four defendants (1) the Corporation of the Presiding Bishop, (2) the Mormon Church
 22 itself, (3) the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints,
 23 and (4) Gregory Lee Foster. All four defendants appeared and answered the Complaint.⁸ The
 24 defendants in that action – including COP – then brought a motion for determination of
 25 diversity. Included within the assertions made by COP was the fact that inclusion of the
 26 Mormon Church as a defendant destroyed diversity. In making that prior motion, COP
 27 admitted that "lack of jurisdiction is not waivable," and the jurisdictional defect can be raised
 28

29
 30 ⁸ See Answer of Defendants Gregory Foster, the Church of Jesus Christ of Latter-day Saints, Corporation of the
 31 President and Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, attached to
 32 Declaration of Timothy D. Kosnoff, as Exhibit B.
 33

34 REPLY TO OPP. TO MOTION TO AMEND/REMAND - 6 of 8

35 (2:06-CV-00556TSZ)

36 [164343.v07.doc]

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1 at any time and, thus, sought the judicial determination of diversity.⁹ The same situation is
2 present here -- the inclusion of the Mormon Church as a defendant destroys diversity.
3 Consequently, the case must be remanded to the Superior Court.

4
5 IV. CONCLUSION

6 For the above-stated reasons, plaintiff respectfully requests that this Court GRANT his
7 motion to amend and remand.

8 RESPECTFULLY SUBMITTED this 26th day of May, 2006.

9
10 GORDON, THOMAS, HONEYWELL,
11 MALANCA, PETERSON & DAHEIM LLP

12 By: /s/ Michelle A. Menely
13 Michael T. Pfau, WSBA No. 24649
mpfau@gth-law.com
14 Michelle A. Menely, WSBA No. 28353
mmenely@gth-law.com
Co-Counsel for Plaintiff

15 LAW OFFICES OF TIMOTHY D. KOSNOFF

16 By: /s/ Timothy D. Kosnoff
17 Timothy D. Kosnoff, WSBA No. 16586
timkosnoff@comcast.net
18 Co-Counsel for Plaintiff

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26 ⁹ See, Church Defendant's Reply on their Motion for Judicial Determination of Diversity Jurisdiction, pg. 3, ll.
19-20, attached to Plaintiff's Motion to Amend/Remand.

REPLY TO OPP. TO MOTION TO AMEND/REMAND - 7 of 8

(2:06-CV-00556-TSZ)

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1 **CERTIFICATE OF ELECTRONIC FILING**
2

3 I hereby certify that on May 26, 2006, I electronically filed the foregoing REPLY TO
4 OPPOSITION TO MOTION TO AMEND COMPLAINT TO CLARIFY STATUS OF
5 DEFENDANTS AND MOTION TO REMAND with the Clerk of the Court using the
6 CM/ECF system which will send notification of such filing to the following:
7

8 Charles C. Gordon
9 cgordon@gmtlaw.com
10 Jeffrey I. Tilden
11 jtilden@gmtlaw.com
12 1001 Fourth Avenue, Suite 4000
13 Seattle, WA 98154
14 PH: 206.467.6477
15 FX: 206.467.6292
16

17 DATED this 16th day of May, 2006.
18

19 _____
20 /s/ Bernadette Lovell
21 Legal Assistant to Michelle A. Menely
22

23 REPLY TO OPP. TO MOTION TO AMEND/REMAND - 8 of 8
24 (2:06-CV-00556-TSZ)
25 [164343 v07.doc]
26

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EXHIBIT
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1 THE HONORABLE RICARDO S. MARTINEZ
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9
10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON – AT SEATTLE
12
13

14 R.K.,
15 Plaintiff,

vs.

16 THE CORPORATION OF THE PRESIDENT
17 OF THE CHURCH OF JESUS CHRIST OF
18 LATTER-DAY SAINTS, a Utah corporation
19 sole;

20 Defendants.
21

22 NO. 04-2338 RSM
23
24 JOINT DISPUTED JURY
25 INSTRUCTIONS
26

NO.	CLAIM	SOURCE	PAGE	JURY
1	Claims and Defenses	9 th Cir. 1.2	4	Plaintiff
2	Claims and Defenses	9 th Cir. 1.2	7	Defendant
3	Burden of Proof	WPI 21.02,21.05	9	Plaintiff
4	Burden of Proof – Plaintiff	WPI 21.02	11	Defendant
5	Burden of Proof – Non-Parties at Fault	WPI 21.10	13	Defendant
6	Corporations and Partnerships – Fair Treatment	9 th Cir. 6.1	14	Plaintiff
7	Religious Organizations Treated Same as Individuals	WPI 1.07	15	Defendant

27 JOINT DISPUTED JURY INSTRUCTIONS -1 of 80
28

(04-2338RSM)
[170548 v1.doc]

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1 ECN No.	2 Title of Claim	3 Source	4 Page No.	5 Party
8	Liability of Corporations – Scope of Authority Not In Issue	9 th Cir. 6.2	16	Plaintiff
9	Scope of Authority Defined	WPI 50.02	18	Plaintiff
10	Scope of Authority Defined	WPI 50.02	19	Defendant
11	Act of Agent is Act of Principal – Scope of Authority Not in Issue	9 th Cir. 6.6	21	Plaintiff
12	Principal Sued But Not Agent – Agency or Authority Defined	WPI 50.07	22	Plaintiff
13	Principal Sued, But Not Agent – Agency or Authority Denied	WPI 50.07	23	Defendant
14	Violation of Statute is Evidence of Negligence	RCW 26.44.030 WPI 60.01	25	Plaintiff
15	Violation of Statute is Evidence of Negligence	WPI 60.03	27	Defendant
16	Reporting Statute	RCW 26.44.030	28	Defendant
17	Definition of Practitioner	1969 Laws of Washington	31	Defendant
18	Definition of Clergyman	1969 Laws of Washington	32	Defendant
19	Definition of Clergyman	1969 Laws of Washington	34	Plaintiff
20	Negligence of Parent Not Imputed to Child	WPI 11.04	35	Plaintiff
21	"Issues"	WPI 20.01, 20.05	36	Plaintiff
22	Plaintiff's Alternative "Issues"	WPI 20.01, 20.05	38	Plaintiff
23	Defendant's "Issues" Instruction	WPI 20.01, 20.05	39	Defendant
24	Intervening Criminal Act	<i>McLoed v. Grant County</i> , 42 Wn.2d 316 (1953); <i>Passovoy v. Nordstrom</i> , 52	42	Plaintiff

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(170548 v1.doc)

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NO.	TOPIC	SOURCE	PAGE NO.	PARTY
		Wn.App. 166 (1988)		
25	Statute of Limitation	RCW 4.16.340	44	Defendant
26	Statute of Limitations – Defenses	<i>Hollman v. Corcoran</i> , 89 Wn.App. 323 (1997)	46	Plaintiff
27	Statute of Limitations – Defenses	<i>Hollman v. Corcoran</i> , 89 Wn.App. 323 (1997)	48	Plaintiff
28	Statute of Limitations – Defenses	<i>Cloud v. Summers</i> , 98 Wn. App. 724 (1999)	49	Plaintiff
29	Statute of Limitations – Defenses	<i>Cloud v. Summers</i> , 98 Wn. App. 724 (1999) 1 Laws of 1991, Ch. 212	50	Plaintiff
30	Segregation of Damages	<i>Tegman v. Accident and Medical Investigations, Inc.</i> 150 Wn.2d 102 (2003); Court Order Dkt No. 153	51	Defendant
31	Segregation of Damages	<i>Tegman v. Accident and Medical Investigations, Inc.</i> 150 Wn.2d 102 (2003); Court Order Dkt No. 153	52	Plaintiff
32	Privileged Communications		53	Defendant
33	Privileged Communications	WPI 6.08	56	Plaintiff
34	"Special Relationship"	<i>C.J.C. v. Corp. of Catholic Bishop</i> , 138 Wn.2d 699 (1999)	57	Plaintiff
35	"Special Relationship" – Duty to Warn	<i>C.J.C. v. Corp. of Catholic Bishop</i> , 138 Wn.2d 699	59	Plaintiff

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No.	Title	Source	Page No.	Party
		(1999); <i>Niece v. Elmview Group Home</i> , 131 Wn.2d 39 (1997)		
36	"Special Relationship" – Protect Third Persons	<i>Peterson v. State</i> , 100 Wn.2d 421 (1989)	61	Plaintiff
37	Mandatory Reporting Statute	RCW 26.44.030	63	Plaintiff
38	Allegation in Complaint	WP1 6.10.01	65	Defendant
-	Plaintiff's Proposed Special Verdict Form		67	Plaintiff
-	Defendant's Proposed Special Verdict Form		74	Defendant

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JOINT DISPUTED JURY INSTRUCTIONS - 4 of 80

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PROPOSED INSTRUCTION NO. 7

DEFENDANT'S PROPOSED ALTERNATIVE INSTRUCTION
RELIGIOUS ORGANIZATIONS TREATED THE SAME AS INDIVIDUALS

The law treats all parties equally whether they are religious organizations or individuals. This means that religious organizations and individuals are to be treated in the same fair and unprejudiced manner.

Defendant in this case is the corporation established by the Church of Jesus Christ of Latter-Day Saints to carry out the secular affairs of the Church. Legally, it stands in the shoes of the Church.

WPI 1.07 (mod.)

Defendant's authority: The first paragraph of the proposed alternative is from WPI 1.07. It achieves the same purpose as plaintiff's proposed instruction, but is superior in that the language specifically states that individuals and religious organizations are treated equally. Given that plaintiff is an individual, this is more appropriate here.

The second paragraph explains why COP is the defendant. Plaintiff previously argued in briefing that the jury “will not understand why COP is the responsible party.” Dkt. No. 163 at 17: 20. It is appropriate to clarify this.

Plaintiff's proposed language in the second paragraph has several problems. First, COP was not established to carry out the "affairs" of the church, but only its secular affairs. Second, the name of the church is not "the Mormon church." Third, the third sentence is of unclear meaning, but appears to add nothing to the second sentence. The only point of the second paragraph is to identify the defendant.

EXHIBIT
4

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04-CV-02338-JY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

R.K.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS,

Defendant.

CASE NO. C04-2338RSM

COURT'S INSTRUCTIONS
TO THE JURY

DATED this 10th day of October, 2006.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

COURT'S INSTRUCTIONS TO THE JURY

**END OF CASE INSTRUCTIONS 16
CORPORATIONS – FAIR TREATMENT**

All parties are equal before the law and a corporation or church is entitled to the same fair and conscientious consideration by you as any party.

Defendant in this case is the corporation established by the Church of Jesus Christ of Latter-Day Saints to carry out the secular affairs of the Church. Legally, it stands in the shoes of the Church.

EXHIBIT
5

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William J. Martini, Judge
Ronald J. Hedges, Magistrate

SR-0455

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Attorneys for Plaintiff, DAVID V. AMES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DAVID V. AMES,

Plaintiff

vs.

CORPORATION OF THE PRESIDENT OF
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/k/a the "MORMON CHURCH," and
WILLIAM SCOTT HANSON, individually.

Defendants

CIVIL ACTION NO.

COMPLAINT AND JURY
DEMAND

INTRODUCTION

Plaintiff, DAVID V. AMES, through his undersigned attorneys, in the form of a Complaint, states the following:

JURISDICTION

1. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.
2. Jurisdiction is conferred upon this Court by 28 U.S.C. §1332 *et seq.* The venue of this action is proper under 28 U.S.C. §1331(b). This cause of action sounds in:
 - a. Sexual battery and violation of N.J.S.A. 2A:61B-1 entitled "Sexual Abuse;"
 - b. Negligence and Breach of Fiduciary Duty;

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- c. Intentional Infliction of Emotional Distress; and
- d. Conspiracy.

THE PARTIES

1. Plaintiff, DAVID V. AMES, is a citizen of the State of Maine, residing in the City of South Portland. At all relevant times, the Plaintiff, was a minor and a member of the Church of Jesus Christ of Latter-Day Saints and attended the Mormon Church ward in Ledgewood, New Jersey. Plaintiff was born on July 31, 1986.

2. Defendant, CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AND SUCCESSORS, also known as the "Mormon Church," operates its worldwide affairs as the Corporation of the President of the Church of Jesus Christ of Latter-day Saints and Successors, a Utah Corporation Sole ("COP" or "LDS"), with principal place of business being in the City of Salt Lake City.

3. COP is a corporation governed by a single individual, the "President" of the Mormon Church. The President wields ultimate and absolute authority within the Mormon Church. The President of the Mormon Church, Gordon B. Hinckley, is the "Divine Prophet, Seer and Revelator" of the Church and has the authority to appoint and remove anyone in the Mormon Church, including all members of wards and stakes, at will. The President of the Mormon Church controls everything in the Mormon Church and all of its wards and stakes. As such, the President of the Church has authority to dictate changes in Church policy, discipline, ecclesiastical doctrine or anything else he so chooses. The acts of the President, in his capacity

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as head of the Mormon Church, are the acts of COP. COP is registered to do business within, and conducts continuous and systematic activities within the State of New Jersey.

4. COP administers the Mormon Church through a multi-level structure. Structurally, the Mormon Church follows a strict hierarchical form. At the local level are "wards," consisting of a geographic area administered by a "bishop" and two counselors which comprise the governing "bishopric." An average size ward would have approximately 250 families. A cluster of 8-12 wards are grouped into a "stake," which is administered by a "stake president." Stakes are, in turn, grouped into "areas," which are administered by an "area president." All bishops, stake presidents, and area presidents are answerable, directly or indirectly, to COP and are its agents and servants. The wards, stakes and areas of the Mormon Church are instruments of COP and are not separate corporate entities.

5. All members of the Mormon Church are required to tithe 10% of their annual gross income to the Church as a condition of membership.

6. During all times material to this action, the Plaintiff regularly attended and tithed to the Mormon Church.

7. The Mormon Church, through the COP and its hierachal officials, agents or representatives, were, at all relevant times, mandatory child abuse reporters, as required by N.J.S.A. 9:6-8 *et seq.*

8. Defendant, WILLIAM SCOTT HANSON ("HANSON"), is a citizen of the State of New Jersey, residing at the Adult Diagnostic & Treatment Center in Avenel, Woodbridge Township, Middlesex County. HANSON is a serial pedophile and a life-long compulsive sexual

predator of boys. He has been convicted in Utah, Wisconsin and New Jersey of molesting and raping young boys. He is presently serving a thirty year sentence in New Jersey and will then serve a consecutive term of forty years for child rape in Wisconsin.

9. At all relevant times HANSON was raping and molesting boys, he was also serving defendant COP's church as High Priest, Scout leader and Young Men's Leader.

FACTS

1. Adherents of the Mormon faith who have been baptized into the Church are known as "members." The President of the Church (and corporate sole of COP) has the power to limit or restrict the capacity in which any member serves the Church, and may place such conditions on a member's service as may be in the interests of the Church and of its members and prospective converts.

2. Adult male members of the Church are eligible to be ordained as a "Priest." There are various levels of priesthood, including elevation to the rank of "Elder," "Melchizedek" Priest and "High Priest." Elders and Melchizedek and High Priests are held out by the Mormon Church as men that are "morally worthy" and deserving of the trust of its members.

3. At all relevant times, the Mormon Church assumed special responsibilities toward its members including a disciplinary and red-flagging system meant to identify and track sexual predators and other dangerous individuals within the membership in order to protect innocent members from harm they might inflict.

4. The Mormon Church is closely affiliated with the Boy Scouts of America. The Mormon Church is the oldest and one of the largest sponsoring organizations of boy scouting in the United